

BEFORE THE
STATE TRUSTEE
INGLEWOOD UNIFIED SCHOOL DISTRICT

In the Matter of the Statement of Reduction
in Force Against:

OAH No. 2014030864

THE CERTIFICATED EMPLOYEES OF
THE INGLEWOOD UNIFIED SCHOOL
DISTRICT NAMED IN THE APPENDIX,

Respondents.

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 22, 2014, in Inglewood. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Jabari Willis, Esq., and Sharon J. Ormond, Esq., Atkinson, Andelson, Loya, Ruud & Romo, represented the Inglewood Unified School District (District).

Lawrence B. Trygstad, Esq., Trygstad, Schwab & Trygstad, represented Respondents.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The District is currently under the authority of a State Trustee, Don Brann, who was appointed by the California Superintendent of Public Instruction, and has assumed all legal rights, duties and powers of the District's Board of Education, in accordance with Education Code section 41326.¹

2. Respondents are certificated employees of the District.

3. As described in more detail below, the State Trustee resolved to reduce and discontinue particular kinds of services totaling 61.00 full-time equivalent (FTE) positions and directed District staff to proceed to layoff certificated staff pursuant to sections 44949 and 44955.

¹ All further statutory references are to the Education Code unless otherwise noted.

4. On or before March 15, 2014, pursuant to the State Trustee's resolution and the provisions of sections 44949 and 44955, District staff gave written notice to Respondents that it had been recommended that notice be given to them that their services will not be required for the 2014-2015 school year. Respondents timely requested a hearing to determine if there is cause for not employing them next school year.

5. The Statement of Reduction in Force was made and filed by Sherryl Carter in her official capacity as the District's Director of Certificated Personnel. Respondents timely submitted Notices of Participation, which contained requests for a hearing to contest the proposed layoffs, or were deemed by the District as having done so. Respondents were provided all required documents.

The Layoff Resolution

6. On March 12, 2014, the State Trustee adopted Revised Resolution No. 38/2013-2014, which provides for the reduction or elimination of the following particular kinds of services:

<u>Services</u>	<u>FTE Positions</u>	
Reduce K-6 Elementary Teaching Services	16.00	FTE
Reduce 7-8 Language Arts Teaching Services	2.00	FTE
Reduce 7-8 Social Science Teaching Services	4.00	FTE
Reduce 7-8 Math Teaching Services	3.00	FTE
Reduce 7-8 Physical Education Teaching Services	2.00	FTE
Reduce 7-8 Physical Science Teaching Services	1.00	FTE
Reduce 7-8 Life Science Teaching Services	4.00	FTE
Reduce 7-8 Spanish Teaching Services	1.00	FTE
Reduce 9-12 English/Language Arts Services	6.00	FTE
Reduce 9-12 Life Science Teaching Services	3.00	FTE
Reduce 9-12 Social Studies Teaching Services	3.00	FTE
Reduce 9-12 Math Teaching Services	6.00	FTE
Reduce 9-12 Physical Education Teaching Services	2.00	FTE
Reduce 9-12 Foreign Language- French	1.00	FTE
Reduce 9-12 Foreign Language- Spanish	1.00	FTE
Reduce 9-12 Industrial Arts- Home Economics Teaching Services	1.00	FTE
Reduce 9-12 Art Teaching Services	1.00	FTE
Reduce Counseling Services	1.00	FTE
Eliminate Assistant Superintendent of Human Resources	1.00	FTE
Eliminate Assistant Superintendent of Educational Services	1.00	FTE
Eliminate Director of Certificated Personnel	1.00	FTE
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Total Full-Time Equivalent Reductions	61.00	FTE

7. District Assistant Superintendent of Human Resources Joyce Kennedy testified that the Revised Resolution was required by the District's current financial difficulties, including that the District must pay back a \$55 million loan that it received from the State which prompted the District being placed under the authority of the State Trustee. A significant percentage of the District's current budget is related to staff compensation and benefits. However, Assistant Superintendent Kennedy admitted that part of the reason for reducing the 16 elementary teacher FTE positions is that the District was over-staffed in that kind of service at the beginning of the current school year due to a reduction in enrollment.

8. The services or programs set forth in Factual Finding 6 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955. Respondents contend that a reduction in "K-6 Elementary Teaching" is not a reduction of a "particular kind of service" within the meaning of section 44955. This contention is without merit. It is well established that a reduction in K-6 elementary teaching is a "particular kind of service." (*California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32, 36-37.)²

9. The State Trustee's determination to reduce or discontinue these services or programs was within his sound discretion and was not proven to be arbitrary or capricious. Services will not be reduced below mandated levels. The reduction or discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees.

The Seniority List and Layoffs

10. The District maintains a seniority list which contains employees' seniority dates, current assignments and locations, credentials, and authorizations. The seniority list was based on information from the District's human resources records, as well as information from the Los Angeles County Office of Education and credentialing records of the California Commission on Teacher Credentialing.

11. Revised Resolution No. 38/2013-2014 also defined that "competency," for purposes of bumping as described in section 44955, includes: (1) possession of a valid clear or preliminary credential in the subject(s) or grade level to which the employee will be assigned at the beginning of the 2014-2015 school year; (2) "highly qualified" status under the No Child Left Behind Act; (3) appropriate full (not emergency) EL authorization (if required by the position); (4) in the case of displacing junior employees teaching in a departmentalized setting, single subject credential(s) or subject matter authorization in that subject area; and (5) any training and experience necessary to meet the job requirements of specialized positions (such as Dual Immersion Teachers or Opportunity Teachers) as indicated in the relevant job descriptions. This definition of competency was not challenged.

² Administrative Law Judge Erlinda G. Shrenger reached the same conclusion in her decision resolving the District's Reduction in Force case brought last year.

12. Attached to Revised Resolution No. 38/2013-2014 are criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the District on the same date. The State Trustee resolved that such criteria would best serve the needs of the District and its pupils. Respondents did not challenge the tie-breaking criteria.

13. The State Trustee did not make any skipping decisions.

14. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced or eliminated. The District then determined whether those least senior employees held credentials in another area and were entitled to bump other employees with less seniority. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by known vacancies and determined the impact on incumbent staff in inverse order of seniority.

15. The District properly considered all known attrition, resignations, and retirements in determining the actual number of necessary layoff notices to be delivered. The District currently does not employ any temporary certificated employees.

16. At the start of the hearing, the District made corrections to the seniority list (exhibit 10) and the tie-break analysis worksheet (exhibit 11). Those corrections were described on the record by the District's counsel, and are shown by interlineations made by the Administrative Law Judge on exhibits 10 (pp. 18 & 22) and 11 (pp. 1 & 2).

17. During the hearing, the District agreed to change the seniority date of Respondent Angela Nadozie from January 6, 2014, to a new date of February 4, 2008. Based on that change, the District rescinded the preliminary layoff notice issued to her.

Individual Respondent Challenges

18. (A) Doris Macdonald. Respondent Macdonald teaches French at the District's City Honors High School, a charter school attended by students intending to go to college, including the University of California (UC) system. All students at that school must take a foreign language. The UC system requires at least two years of a foreign language, but prefers that students take three years. Respondent is the only teacher currently at the school who teaches French. The only other foreign language teacher at the school teaches Spanish.

(B) Respondent Macdonald testified that if her position is eliminated, only Spanish will be available at that school given the current staffing. She believes that would be a problem because many students who attend the school already speak Spanish. Moreover, Respondent Macdonald does not believe the remaining foreign language teacher, Ms. Edwards, would be able to teach all the students at the school who need foreign language classes. Respondent Macdonald also testified that her principal at City Honors High School wants Ms. Macdonald to be retained for those reasons.

(C) Respondent Macdonald's argument is not convincing. The District has discretion to perform its assignments and reassignments as it deems appropriate, so long that it acts in good faith.³ The State Trustee has discretion to determine whether and how the foreign language needs of the District's students will be met, including those at City Honors High School. Assignments for the next school year have not been made yet. It was not established that the District will retain a less senior teacher to teach a position Respondent Macdonald is credentialed and competent to perform. Under these circumstances, Respondent Macdonald failed to establish the elimination of the position she is currently holding was done in bad faith or was arbitrary and capricious.

19. (A) Paula Morrison. Respondent Morrison has a seniority date of September 8, 1986, and is the most senior Respondent in this case. Respondent Morrison has a clear single subject credential in home economics, as well as a clear certificate of completion of staff development. She has always taught Home Economics at the District.

(B) During the hearing, Assistant Superintendent Kennedy conceded on cross-examination that the District has 16 certificated employees serving in the position known as a Program Instructional Facilitator (PIF). Those serving in that position essentially coach other teachers. Assistant Superintendent Kennedy agreed that no particular credential is needed to fill this position; an employee simply needs to be credentialed.

(C) According to the District's seniority list, Respondent Morrison is senior to all of the current PIFs but one. Since Respondent Morrison has a credential and is senior to the other teachers currently serving as a PIF, she argues that she should be allowed to bump into a PIF position.

(D) The District argues that Respondent Morrison should not be allowed to bump into a PIF position because such positions only arise at the beginning of the school year when particular schools within the District decide that they want that position. However, 16 of the 18 eligible schools voted to have a PIF this school year. The PIF positions are not subject to reduction or elimination in this layoff and no evidence was presented indicating school site interest in this position will wane next school year. Thus, the District's concern is purely a hypothetical one, in that it is more probable than not that many PIF positions will be available next school year.

³ School districts have discretion to define positions in the manner which they will be taught as long as it is done in good faith. (*Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334.) A governing board has the discretion to determine to reduce services by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved. (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.) In determining whether the decision of a governing board is reasonable or in good faith, its action is measured by the standard set by reason and reasonable people, bearing in mind that such a standard may permit a difference of opinion on the same subject. (*Campbell v. Abbott* (1978) 76 Cal.App.3d 796, 808.)

(E) The District also questions whether Respondent Morrison is qualified to perform the PIF position. Although the Revised Resolution defines competency for purposes of bumping, the District did not argue that it would prevent Respondent Morrison from bumping, nor does it appear that definition would do so. Moreover, no evidence was presented indicating that any particular prior education, training or experience is needed to perform this position, other than having a credential. Since the State Trustee decided not to skip this position (or any other), it must be assumed that having a valid credential is the only prerequisite for this position, which Respondent Morrison possesses.

(F)(1) Finally, the District contends its collective bargaining agreement (CBA) with Respondents' union precludes it from bumping Respondent Morrison into a PIF position. Assistant Superintendent Kennedy testified that according to the CBA, a PIF position must be applied for by an interested teacher and selected by the individual school sites; the District may not assign an employee to a PIF position. By the time the PIF positions are applied for and selected next school year, the District argues, Respondent Morrison would no longer be an employee of the District, by dint of being laid off, and therefore no longer eligible for selection.

(F)(2) Established law requires that statutes trump contracts, express or implied, including CBAs. "[C]ontract terms cannot supersede the statutory protections for teachers set forth in the Education Code, including provisions governing their classification and termination." (*California Teachers Assoc. v. Vallejo City Unified School Dist.* (2007) 149 Cal.App.4th 135, 147.) "[A]ny contractual provisions purporting to waive the protections accorded certificated employees" are overruled by the Education Code. (*Bakersfield Elementary Teachers Assoc. v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1275.) A CBA cannot supersede the Education Code when it comes to a laid off teacher's preferred reappointment rights. (*Daniels v. Shasta-Tehama-Trinity J. Community College Dist.* (1989) 212 Cal.App.3d 909, 913.) And a court may not enforce a CBA where to do so "would alter the system for [layoffs] established by the Education Code by requiring the District to skip certain less senior teachers and layoff more senior teachers." (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 338.)

(F)(3) In this case, the CBA concerning the selection of PIFs to the school sites cannot trump the seniority rights afforded by the Education Code to teachers in layoff cases. Respondent Morrison is senior to all the other PIFs but one. If the CBA in this case was used to trump the Education Code, the result would be laying off Respondent Morrison and retaining a number of junior teachers to perform the PIF position that Respondent Morrison is credentialed and competent to perform. Under these circumstances, the Education Code allows the State Trustee to override the CBA and assign Respondent Morrison to a PIF position for the following school year.

(G) Based on the above, Respondent Morrison may bump into a PIF position.

20. Taking into account the changes described above, no junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render.

LEGAL CONCLUSIONS

1. The party asserting a claim or making charges in an administrative hearing generally has the burden of proof. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155.) For example, in administrative hearings dealing with personnel matters, the burden of proof is ordinarily on the agency prosecuting the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113.) In personnel matters concerning the dismissal of a teacher for cause, the burden of proof is similarly on the discharging school district. (*Gardner v. Commission on Prof. Competence* (1985) 164 Cal.App.3d 1035.) As no other law or statute requires otherwise, the standard of proof in this case requires proof to a preponderance of the evidence. (Evid. Code, § 115.) In this case, the District bears the burden of establishing cause to affirm the proposed layoff decisions by a preponderance of the evidence.

2. All notice and jurisdictional requirements of sections 44949 and 44955 were met. (Factual Findings 1-5.)

3. The services identified in Revised Resolution 38/2013-2014 are particular kinds of services that can be reduced or discontinued pursuant to section 44955. The State Trustee's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of his discretion. Services will not be reduced below mandated levels. Cause for the reduction or discontinuation of those particular services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. (Factual Findings 6-9.)

4. (A) Respondents argue the proposed layoff decision is invalid because part of the decision-making included declining enrollment in the District's elementary schools. Respondents' argument is unconvincing. As stated in *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under Education Code section 44955, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction." Such a decision may be overruled if proven to be arbitrary or capricious, but a motivation to maintain flexibility in light of financial uncertainty is neither. (*Campbell Elementary Teachers Association, Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 808.)

(B) In this case, the District met its burden of establishing by a preponderance of the evidence that the proposed layoff involves the reduction of particular kinds of services pursuant to section 44955. The District's financial woes are amply demonstrated by the fact that the District is under the authority of a State Trustee. The District is responsible for repaying a \$55 million loan from the state; a significant amount of its current budget must be

used to compensate its staff. The instant layoff decision was caused by overall budget concerns and not a simple reduction in average daily attendance (ADA) at the District's elementary schools. Such was established by the persuasive testimony of Assistant Superintendent Kennedy, as well as the fact that Revised Resolution No. 38/2013-2014 also reduces or eliminates services at the District's middle and high schools, as well as within its administrative offices. Thus, the reason for the layoff, i.e., the reduction or elimination of particular kinds of services (PKS), was correctly stated in the pertinent notices. There is nothing in section 44955 prohibiting a past decline in student enrollment in some of a district's schools from being one factor in the overall decision to reduce or eliminate particular kinds of services. (Factual Findings 1-9.)

5. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. (Factual Findings 1-9.)

6. During the hearing, the District rescinded the preliminary layoff notice issued to Respondent Angela Nadozie. In addition, Respondent Morrison established that she is entitled to bump into a PIF position. The Statement of Reduction in Force against them should be dismissed. (Factual Findings 17 & 19.)

7. Taking into account the above findings and conclusions, no junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render. (Factual Findings 1-20.)

ORDER

1. The Statement of Reduction in Force is dismissed against Respondents Angela Nadozie and Paula Morrison. The District shall not give them final layoff notices for the next school year.

2. The Statement of Reduction in Force is sustained as against the remaining Respondents. The District may give a final notice of layoff to those Respondents. Notice shall be given to those Respondents that their services will not be required for the 2014-2015 school year, and such notice shall be given in inverse order of seniority.

Dated: May 1, 2014

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearing

Appendix: The Respondents

1. Amini, Ali
2. Avila, Nancy
3. Alaniz, Robert
4. Bailey, Miller
5. Barbee, Jonathan
6. Barahona, Miguel
7. Bellante, Matthew
8. Bihag, Amy
9. Butler, Cordiya
10. Cano Carrillo, Miriam
11. Cantu, Melissa
12. Cifuentes, Otto Ivan
13. Cruz, Jorge
14. Ebs, Diane
15. Favor, Sue
16. Ferris, Michael
17. Hamad, Jamie
18. Grandpre, Mark
19. Gonzalez, Carlos
20. Klingler, Michael
21. Lierberman (Knehnetsky), Jaye
22. Lee, Kathy
23. Lu, Yi Ping
24. Linder, Rebecca
25. Martinez, Nancy
26. Macdonald, Doris
27. Morrison, Paula
28. Mundi, Ama
29. Myers, Julia
30. Nadozie, Angela
31. Rashilla, Nicholas
32. Same Etame, Henri
33. Singleton, Sigmund
34. Spruce, Mary
35. Vallejo, Mary
36. Wade, Christopher
37. Walker, Mia
38. Williams, Denisha R.
39. Williams, Maureen
40. Winslow, Chantelle